IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9839 of 2004
With
SPECIAL CIVIL APPLICATION NOS.9846 and 9847
OF 2004.

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOKALBHAI MOHANBHAI RABADIA
Versus
LALJIBHAI POPATBHAI

Appearance:
MR ASHISH M DAGLI for Petitioner.
MR VK JOSHI for the Respondents.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 24/08/2004

COMMON ORAL JUDGEMENT

Rule. Learned counsel Mr. V.K.Joshi appearing for the respondents waives service of notice of

Rule. At the request of the learned counsel for the parties, these petitions are heard finally.

2. These petitions have been filed by the petitioner under Article 227 of the Constitution of India, whereby the petitioner is challenging the judgment and order dated 31st December, 2003 in Civil Miscellaneous Appeal No. 40 of 2002 passed by the learned Joint District Judge, Junagadh, whereby the order dated 10th May, 2002 below injunction application exh. 5 in Regular Civil Suit no. 96 of 2002 passed by the learned Civil Judge (J.D.), Junagadh has been confirmed.

3. The learned counsel for the petitioner submits that the petitioner is the original plaintiff in Regular Civil Suit no. 96 of 2002. The golden thread running throughout the plaint of the suit is that the respondents (original defendants) have not obtained development permission for the premises in question. The construction activities which are being carried out or has been carried out are without eprmission of the authority. The said construction is illegal in nature and it violates the easementary rights of the petitioner. The learned counsel for the petitioner submitted that the permission for development produced by the respondents at mark 14/3 is not a genuine document. There is no proper authorisation from the Gram Panchayat. No such plan has ever been approved by the Gram Panchayat. This aspect of the matter has not been properly appreciated by both the courts below. Hence, the judgments and orders passed by the courts below deserve to be quashed and set aside.

4. The learned counsel for the respondents submitted that the construction activity which is going on in the disputed land is as per the permission given by the Gram Panchayat. The original permission given by the Gram Panchayat has already been produced before Gujarat STate Co-operative Agricultural and Rural Development Bank Ltd. for getting land. Nonetheless, the fact remains tht a photo copy thereof was produced before the trial court. It is also averred by the learned counsel for the respondents that the order whereby the plans were approved by the Gram Panchayat was cancelled subsequentlyby the very same Gram Panchayat and the said order of Gram Panchayat, Goladhar was challenged by the respondents in Appeal under Sections 343 and 244 of the Gujarat Panchayats Act, 1993 before District Panchayat, Junagadh and the stay has been granted by the Appellate Committee of the District Panchayat, Junagadh vide order dated 19th June, 2002. Thus, as on today, there is a valid permission for construction with the respondents.

Hence, the orders passed by the courts below are true and correct and there is no substance in these petitions and the petitions therefore, deserve to be dismissed.

5. I have perused the orders passed by the courts below. Looking to the nature of document, it seems that the construction permission given by the Gram Panchayat is grossly in dispute, especially for the reasons referred to in paragraphs 7 and 13 of the order dated 10th May, 2002 below application exh. 5 in Civil Suit no. 96 of 2002 passed by the learned 3rd Joint Civil Judge (J.D.), Junagadh. This aspect of the matter has not been properly appreciated by the courts below. When the Gram Panchayat has not granted the permission for construction, it becomes very much doubtful whether ever such plans have been approved. This is explicitly clear on the basis of Annexure "F" at page nos. 50 and 51 to the memo of petition. Without going into much details of the documents on record and looking to the facts and circusmtances of the case, these petitions deserve to be allowed and they are accordingly allowed. Both the parties are directed to maintain status quo with regard to the property in question till the final disposal of Regular Civil Suit no. 96 of 2002. It is hereby directed that the respondents shall not carry out any further construction nor shall start usage of the premises in question. The trial court is directed to dispose of Regular Civil Suit no. 96 of 2002 as early as possible and practicable and preferably on or before 30th November, 2004. The learned counsel appearing for both the parties have agreed not totake any adjournment in this suit except in rarest of rare cases. I hope and trust that the trial court shall dispose of the above suit on or before 30th November, 2004 without preferring any further application for extension of time.

Junagadh District Panchayat is also directed to dispose appeal bearing No. U-2/4/2002 preferred by the respondents (original defendants) under Sections 243 and 244 of the Gram Panchayats Act, 1993, arising out of the order dated 10th May,2003 passed by the Taluka Development Officer, Junagadh. The aforesaid appeal shall be decided by the District Panchayat, Junagadh on or before 30th September, 2004.

With the aforesaiddirections and observations, the judgment and orders passed by the courts below are modified to the aforesaid extent. However, the directions given by the trial court by its order dated 10th May, 2002 below application exh. 5 in Regular Civil Suit no. 96 of 2002 shall remain

operative. Rule made absolute accordingly in each petition with no order as to costs.

(D.N.Patel,J)

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